



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 30.01.2018, 31.01.2018 & 06.02.2018

Delivered on : 02.03.2018

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CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)Nos.6269, 6308, 6348, 5392 to 5395, 4970, 4972, 4984, 4985, 6344, 5941, 5944 and 5188 to 5191 of 2013

and

M.P.(MD)Nos.1, 1, 1 and 1 of 2013 in Crl.O.P.(MD)Nos.5392 to 5395 of 2013 &

M.P.(MD)Nos.2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2 & 2 of 2013 in Crl.O.P.(MD)Nos.4970, 4972, 4984, 4985, 5188 to 5191, 5941, 5944, 6269, 6308, 6344 & 6348 of 2013 &

M.P.(MD)Nos.3, 3, 3 and 3 of 2013 in Crl.O.P.(MD)Nos.6269, 6308, 6344 & 6348 of 2013

Crl.O.P.(MD)No.6269 of 2013:-

1.Sudhakar

2.Bhagya Lakshmi

... Petitioners

Vs.

U.S.M.Sampathkumar

... Respondent

1.Sudhakar

2.Bhagya Lakshmi

... Petitioner / A4 & A5 in Crl.O.P
(MD)Nos.6308,4970,4972,
4984,4985/13

1.Suresh Kumar Singhi

...Sole Petitioner/A2 in Crl.O.P(MD)
Nos.5392 to 5395/13,6348,5941,5944,
6344/13,5188 to 5191/13

2.Pratibala

...2nd Petitioner/A3 in Crl.O.P(MD)
6344/13,5188,6348,5189,5190&5191/13

vs

U.S.M.Sampathkumar

...Respondent/Complainant in Crl O.P.
(MD)Nos.6308/13,6348,5392 to
5395,4970,4972,4984,4985,6344,
5941,5944,5188,5189,5190 & 5191/13

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure, to call for the records relating to the case in C.C.No.38 of 2013,C.C.Nos,39,39,28,38,39,27,27, 19,28,20,38,20,19,19,20,28 and 27 respectively on the file of the



Judicial Magistrate Court No.II, Virudhunagar and quash the same insofar as the petitioners are concerned.

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For Petitioners	: Mr.C.Murugavel 6269,6308,6348/13 4970,4972,4984&4985
For Petitioner	: M/s.N.Dilipkumar in CrI.O.P Nos.6344, 5188 to 5191/13
For Petitioner	:M/s.V.Illanchezian in CrI O.P.Nos.5941/13,5944,5392 to 5395/13
For Respondent	: Mr.M.Ashok Kumar in all CrI.O.P's

COMMON ORDER

Since the issues involved in all the Criminal Original Petitions are interlinked, they are clubbed together and disposed of by this common order.

2.The petitioners herein are Accused Nos.4, 5, 4, 5, 2, 3, 2, 2, 2, 4, 5, 4, 5, 4, 5, 4, 5, 2, 3, 2, 2, 2, 3, 2, 3, 2, 3, 2 and 3 in C.C.Nos.38, 39, 39, 28, 38, 39, 27, 27, 19, 28, 20, 38, 20, 19, 19, 20, 28 and 27 of 2013 respectively on the file of the Judicial Magistrate Court No.II, Virudhunagar. Now, these Criminal Original Petitions have been filed under Section 482 Cr.P.C., to quash the abovesaid proceedings.

3.The case of the prosecution is that the respondent herein is the Proprietor of Niraimathi Traders and he is doing business in Cardamom, Pepper, Coriander etc. According to him, the petitioners herein and another one accused viz., Anup Kumar Singhi are running a business under the name and style 'Aroma Seasoning Foods' at Chennai. For the abovesaid concern, Anup Kumar Singhi is the Proprietor. One Suresh Kumar Singhi is the General Manager, Pritibala is the Executive Manager, Sudhakar is the purchaser and one Bhagya Lakshmi is dealing with the finance transactions who are all accused in these cases, except Anup Kumar Singhi, who is a Proprietor of Aroma Seasoning Foods. In the course of business transaction, from June to August 2012, the petitioners in these cases have purchased Pepper and Coriander under various bills by issuing cheques. When the cheques were presented in State Bank of India, Virudhunagar, the same were returned with an endorsement 'insufficient funds'. After sending notices to all the accused including the petitioners herein, the respondent laid a complaint before the learned Judicial Magistrate No.II, Virudhunagar, for an offence punishable under Section 138 r/w. 141 and 142 of the Negotiable Instruments Act, 1881 [hereinafter referred to as 'the Act'].



4.The sum and substance of the contention made on behalf of the petitioners as in the complaints, the respondent mentioned only Anup Kumar Singhi is the Proprietor of the concern viz., Aroma Seasoning Foods. In this occasion, in the instant cases, instead of filing complaints against the said Anup Kumar Singhi, the respondent added the petitioners herein for the very same offence, which is legally not maintainable.

5.In Raghu Lakshminarayanan Vs. Fine Tubes reported in 2007 (5) SCC 103, the Hon'ble Supreme Court has held as follows:

'A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs.'

6.Further, in P.Sivaprakasam Vs. R.Kartikayan reported in CDJ 2010 MHC 3120, this Court has held as follows:

'4.When the borrower is admittedly a proprietary concern, none other than the proprietor i.e., the second accused can be roped in. As observed by the Hon'ble Apex Court in Raghu Lakshminarayanan Vs. Fine Tubes in 2007 (2) SCC (Cri) 455, 'a person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs'.

7.So, according to the findings of our Hon'ble Supreme Court as well as by this Court, with regard to proprietary concern, the Proprietor thereof alone is solely responsible for conduct of its affairs. Further, the drawer, who issued cheques alone can be held responsible. Now, in these cases, the respondent himself admitted in the complaints as Anup Kumar Singhi is the Proprietor for the concern viz., Aroma Seasoning Foods. Therefore, including the petitioners herein as accused, is legally not sustainable.

8.In view of the above, this Court is inclined to quash the proceedings relating to C.C.Nos.19, 20, 27, 28, 38 and 39 of 2013 on the file of the Judicial Magistrate Court No.II, Virudhunagar, in respect of the petitioners alone. Accordingly, the same are quashed in respect of the petitioners alone and these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (RTI)

/True copy/



To

The Judicial Magistrate No.II,
Virudhunagar.

+1cc to Mr.M.Ashok Kumar, Advocate, SR.No. 52792
+1cc to Mr.V.Illanchezian, Advocate, SR.No.52455

CrI.O.P. (MD) Nos.6269, 6308, 6348, 5392 to 5395, 4970, 4972, 4984,
4985, 6344, 5941, 5944 and 5188 to 5191 of 2013
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KK/JC/15.03.2018/SAR-2/4P-4C